

City of
Burlington, Vermont

Miscellaneous Appeal - Enforcement – DRB Staff Comments

ZP #: 14-0748AP

Tax ID: 050-2-097-000

Application Date: July 1, 2014

Property Address: 124 SPRUCE STREET

TO: Development Review Board

FROM: Jeanne Francis, Zoning Enforcement Specialist
Ken Lerner, Zoning Administrator

DATE: July 15, 2014

RE: 14-0748AP; Appeal of Notice of Violation # 266942 at 124 Spruce Street

Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

LOCATION: 124 Spruce Street

TAX LOT #: 050-2-097-000

APPELLANT: Laurel Broughton

Recommendation: Uphold the issuance of Zoning Violation # 11-0936FC regarding the placement of a fence based on the findings below, and request Code Enforcement to follow up with the responsible party to cure the violation by:

- (1) Removing or relocating the current fence to within one-foot west of the 124 Spruce St. property line consistent with approved site plan.
- (2) Submitting to Planning Zoning Office, an accurate and corrected site plan for the fence if relocated other than consistent with the ZP 11-0936FC site plan
- (3) Repairing, at Appellant's expense, any and all damage incurred from the relocation or removal of the fence (including disturbances incurred at 132 Spruce Street).
- (4) Obtaining a Unified Certificate of Occupancy for the fence.

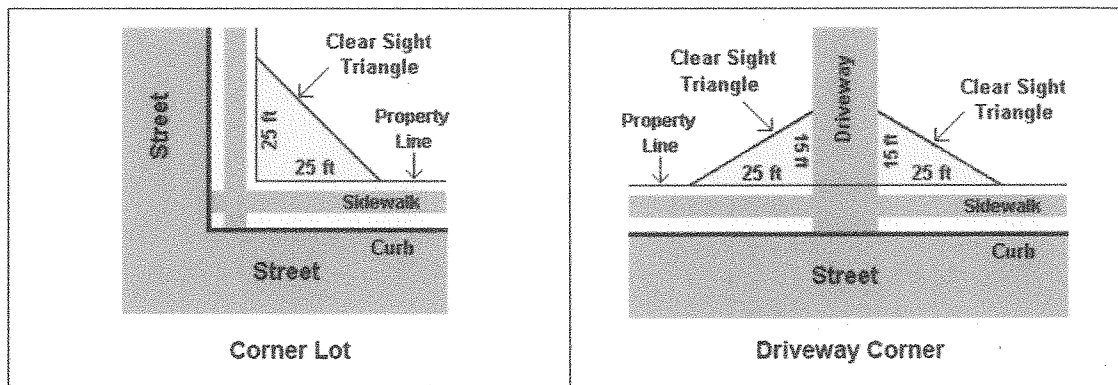
Findings

A. Background

- May 20, 2011 ZP 11-0936FC approved to "Install Cedar picket fence; 3 ft. high from 15 ft. setback; 4 ft. high beyond that to rear fence. Replace existing fence from NE corner of garage to rear and from NE corner to new fence on East property line."
 - o Conditions of Approval include the following:
 1. The fence design is as depicted on the submitted photo approved May 20, 2011.
 2. The proposed fence shall be setback sufficiently to provide for the maintenance of both sides of the fence without entering onto the adjacent property and shall present a finished side to the

adjoining property and public street in accordance with Sec. 6.2.2(m) of the City of Burlington Comprehensive Development Ordinance.

3. The fence scales at 26.5 feet from the driveway. If the fence is placed within the clear sight triangle along any driveway it shall be limited to 3-feet in height above the curb for a distance of not less than 15 ft. in order to provide safe sight distances for pedestrians and vehicles in accordance with the following diagrams from Sec. 6.2.2(m) of the City of Burlington Comprehensive Development Ordinance:



Plus Standard Permit Conditions 1-18

- June 6, 2011 the approved permit released; no appeal filed.
- April 23, 2013 Certificate of Occupancy requested. Code Enforcement Office determined, based on all approved documentation, project complied and issued a certificate of occupancy for ZP 11-0936FC.
- October 22, 2013 fence location was questioned by the adjacent owner, but opted to work with Appellant to try and resolve issues; attempt was unsuccessful.
- October 28, 2013 written complaint filed that fence was constructed on 132 Spruce Street property; Owner of 132 Spruce St. submitted a survey by a Certified Land Surveyor depicting the two properties indicating the fence was constructed on 132 Spruce St. property.
- October 28, 2013 Code Enforcement Office verified fence on eastern boundary of 124 Spruce Street was constructed on 132 Spruce St. property; fence is approximately 3 feet inward (east) of survey stake.
- October 28, 2013 Code Enforcement Office sent a letter to Owners of 124 Spruce St. informing that the fence was placed beyond their property boundary lines. Owner responded that the fence would be relocated.
- November 6, 2013, attorney for appellant responded in writing requesting the Code Enforcement Office to decline investigating the complaint as the issue at hand is a property line dispute that cannot be resolved by Code.

- January 28, 2014, City Attorney responded to the appellants' attorney that based on new evidence, (the survey), the fence is constructed on property at 132 Spruce St.; and this constitutes a zoning violation. The City allowed until May 1, 2014 to relocate the fence onto 124 Spruce St. with a written agreement. If fence is not removed, the City will move forward with enforcement.
- Fence was not removed by May 1.
- May 19, 2014 a notice of violation issued.
- May 30, 2014 notice of violation appealed.

B. Appeal Position/Response

- Appellant argues that there is a dispute regarding the location of the boundary line between 124 and 132 Spruce Street. Specifically, that the survey relied upon by the City is incorrect, as the boundary line has been established by adverse possession, such that the fence does not encroach on the adjacent property. Appellant indicated they will be prepared to present evidence before the Board.

Appellant claim of adverse possession is not in the Board's jurisdiction and can only be adjudicated by a court order.

- Attorney for Appellants has stated that his clients may dispute the property line. However, this land dispute is not before the Board to determine. Currently the City has relied on the submitted survey that demonstrates non-compliance with the installation of a fence. This document is sufficient evidence of the fence not being placed as illustrated on the approved site plan. Note that Standard Permit Condition #15 states *"For Properties Involved in Boundary Disputes. When there is a boundary dispute regarding the subject property, and, as no certified survey has been produced to the Planning and Zoning office to help resolve the dispute, this permit is granted upon the information, including site plan, provided by applicant. If another party submits sufficient evidence (i.e. a certified survey) to demonstrate that the boundary is not as indicated by applicant, this permit shall be null and void. Further applicant shall bear all costs to remedy the situation, including removal of the structure(s) if necessary, that is if the structure(s) is/are unable to meet the requirements of the zoning ordinance and receive an amended permit in light of the actual boundary line"*.
- Further, the Comprehensive Development Ordinance (CDO) identifies the "persons liable", which in this case is the owner of 124 Spruce St. who is responsible to correct the misplacement of the fence. Refer to CDO Sec. 2.7.6: *The owner, tenant, or occupant of any structure or land or part thereof who participates in, assists, directs, creates, or maintains any situation that is contrary to the requirements of this ordinance, and any architect, builder, contractor, agent, or other person who knowingly participates in, assists, directs, creates, or maintains any situation that is contrary to the requirements of this ordinance, may be held responsible for the violation and suffer the penalties and be subject to the remedies herein provided.* Standard permit condition #11 states *"Errors. Permittee is solely responsible for the accuracy of all information contained in the Zoning Permit form and in accompanying documentation. Any errors contained therein may*

invalidate the Zoning Permit and may result in issuance of a zoning violation citation and prosecution”.



124 Spruce Street

Fence in Question

132 Spruce Street



Stake placed by surveyor showing the property line. Stake and flag have since been removed.



Property marker (pin) placed by Surveyor.



Fence remains on property known as 132 Spruce Street. Pin.

February 12, 2014

City of Burlington
Department of Planning and Zoning
149 Church Street, City Hall
Burlington, VT 05402-8415

RE: Complaint regarding 124 Spruce Street, Burlington

Dear Sir or Madam:


Please find enclosed Ms. Broughton's Appeal of an Administrative Decision Request along with a check in the amount of \$250. This letter will serve as a supplement to the above-referenced form.

The decision under appeal is a finding that the installation of a fence by Ms. Broughton is in violation of permit ZP# 11-0936FC because the fence is located on the adjacent property located at 132 Spruce Street. *See* enclosed letter dated January 28, 2014.

Ms. Broughton's property is a single family home located at 124 Spruce Street. This appeal is brought pursuant to Sec. 2.7.11 the Burlington Comprehensive Development Ordinance (Administrative Appeal).

Ms. Broughton requests that the finding be vacated on the grounds that there is a dispute regarding the location of the boundary line between 124 and 132 Spruce Street. Specifically, Ms. Broughton contends that the survey relied upon by the City is incorrect, and she also contends that the boundary line has been established by adverse possession, such that the fence does not encroach on the adjacent property. Ms. Broughton will be prepared to present evidence before the Development Review Board.

Very truly yours,



Kevin M. Henry

Enclosures

cc: Laurel G. Broughton



Department of Planning and Zoning

149 Church Street, City Hall
Burlington, VT 05401-8415

Phone: (802) 865-7188

Fax: (802) 865-7195

www.burlingtonvt.gov/pz

Appeal of an Administrative Decision Request

Use this form to appeal any Administrative Decision or Notice of Violation - See Sec. 12.2.2 of the Zoning Ordinance.

SUBJECT LOCATION ADDRESS: 124 Spruce Street

Subject Property Owner: Laurel Broughton

Appellant: Laurel Broughton

Agent/Representative: Kevin Henry

Mailing Address: 150 S. Champlain Street P. O. Box 1489

City, St, Zip: Burlington, VT 05402-1489

Day Phone: 802-864-0880 Email: khenry@primmer.com

Appellant Signature: Laurel Broughton Date: February 11, 2014

In order for your request to be considered complete, ALL of the following information must be provided, as applicable:

- ☒ The Appeal fee of \$250;
- ☐ Description of the decision under appeal; See attached letter
- ☐ Description of the property subject to the appeal;
- ☐ Reference to the regulatory provisions applicable to the appeal;
- ☐ Relief requested by the appellant;
- ☐ Alleged grounds why such requested relief is believed proper under the circumstances.

Office Use Only:

Check No. 004517 Amount Paid \$250 Zoning Permit # _____

May 8, 2014

Mailed Certified Mail #7010 0780 0001 2226 1155
And FIRST CLASS MAIL

T. ALAN & LAUREL BROUGHTON
124 SPRUCE STREET
BURLINGTON, VT 05401

NOTICE OF VIOLATION AT:
124 SPRUCE ST, BURLINGTON, VT
TAX LOT #050-2-097-000

Zoning Violation# 266942

Dear T. ALAN & LAUREL BROUGHTON,

It has come to the attention of this office that a zoning violation exists at 124 Spruce St.

Description of Violation: Fence approved under ZP 11-0936 constructed does not comply with approvals. Violation of standard permit condition #15 and approved site plan. See attached documents

Burlington Comprehensive Development Ordinance (CDO) Article(s): 2, 3, 5, 12, and 24 VSA §4451.

Please be advised that violations of the CDO are subject to fines of up to two hundred dollars (\$200.00) for each day that a violation continues. You may submit an application to attempt correction of the violation, however, be advised application and filing fees are subject to a fee increase for permits required to correct a violation (see Violation Details Remedy Options #2 and CDO Section 2.7.8).

This correspondence serves as a formal notice of a zoning violation pursuant to 24 V.S.A §4451. You have seven (7) days from receipt of this notice to cure the referenced violation. Additional warnings for the violation are not required and will not be forthcoming. In the event that the violation is not cured or remedied as provided for in this notice, the City will pursue enforcement of the violation as provided for by law.

This NOV is a decision of the Zoning Enforcement Officer, designee of the Burlington Zoning Administrator, may be appealed to the Development Review Board in accordance with the provisions of CDO Sections 2.7.11 and 12.2.2 provided that such appeal is filed within fifteen (15) days of the date of this NOV May 6, 2014, and accompanied by the appropriate fee in accordance with Sec. 3.2.4(a) of the CDO. Appeal fee and complete application shall be filed with the City's Planning and Zoning Office (City Hall, 149 Church Street) by **4 pm on May 22, 2014**; an appeal shall not be perfected until the fee is received.

If you have any questions, please call me at (802) 864-8518.

Sincerely,



Jeanne Francis
Zoning Compliance Officer

Enclosures: Violation Details

Cc: Land Records for Tax Lot # 050-2-097-000

VIOLATION DETAILS

LOCATION: 124 Spruce ST

DECISION DATE: May 6, 2014

VIOLATION DESCRIPTION: Fence approved under ZP 11-0936 has been constructed on property located at 132 Spruce St. Violation of standard permit condition #15 and approved site plan. See

attached documents.

FINDINGS: On May 20, 2011 ZP 11-0936F was approved to install a cedar picket fence, 3 ft. high from 15 ft. setback; 4 ft. high beyond that to rear fence. Replace existing fence from NE corner of garage to rear and from NE corner to new fence on East property line; subject to conditions of approval; Unified Certificate of Occupancy issued April 23, 2013.

October 22, 2013 Code Enforcement Office received a written complaint that fence constructed and installed by owners of 124 Spruce Street (east property line) was constructed on their property at 132 Spruce Street, east of 124; complainant attached a survey drawn by Warren Robenstein, a certified surveyor which was filed in City land records; the disputed fence appears to be located on property known as 132 Spruce Street; our inspector confirmed, according to surveyor markers, the fence is not on 124 Spruce St.

October 28, 2013 a notification letter was mailed to Alan and Laurel Broughton informing them the Code Office received a written complaint alleging the fence constructed under ZP 11-0936 was actually placed on their property (132 Spruce Street); owners responded initially they would relocate the fence, then obtained the services of Attorney Kevin Henry.

November 6, 2013, Kevin Henry corresponded to Code Enforcement Office in response to the October 28, 2013 notice; Attorney Henry asked Code to consider declining to investigate the complaint as the issue at hand is a property line dispute that cannot be resolved by Code.

January 28, 2014 Assistant Atty. Kimberlee Sturtevant responded to the Henry memo. Broughtons constructed a fence under ZP 11-0936FC and based on new information (survey) it appears that Broughton's did not install the fence according to the approval granted in ZP 11-0936FC. In lieu of a notice of violation, if agreeable to Broughtons, City would be agreeable to a deadline of May 1, 2014 to relocate the fence to their parcel; formal agreement would be required, along with financial reimbursement to the City. Broughton's did not agree and Attorney attempted to appeal Attorney Sturtevant's letter; Sturtevant letter is not appealable.

To date fence remains on property of 132 Spruce Street. No agreement between property owners and City were

REMEDY OPTIONS: Within seven (7) days from receipt of this notice you may cure the violation by:

1) – Removing the violation noted above, [detail of how the violation can be removed – ie. Removing additional porch, deck, installing a barrier around parking area and restore lawn, etc.], **restoring the Premises to its prior state, and informing the Code Enforcement Office that the violation has been removed so our office may verify compliance; or**

2) - Obtaining approval from the City's Department of Planning and Zoning for Inconsistent Site Plan [nature of violation ie. Increasing parking, adding an additional unit, etc. from Info folder] without an approved zoning permit (permit application **fee is doubled** if complete application is submitted within seven days from receipt of the NOV,

tripled if a complete application is submitted 7-15 days from receipt of the NOV, or triple plus \$75 per hour of Code Enforcement staff time (up to \$500) if a completed application is submitted after 15 days from date of NOV receipt). See CDO Section 2.7.8. **PLEASE NOTE:** If the zoning permit request is denied, the violation is **NOT** cured. Owner shall be required to remove the violation as noted in #1 above or request an agreement as noted in #3 below within five (5) business days from date of the permit denial to remedy the violation; **or**

3) - Entering into an Agreement with the City of Burlington to extend deadlines in which to come into compliance with the City's ordinance (**administrative fees required**).

APPEAL RIGHTS: You have the right to appeal the enforcement officer's decision that a zoning violation exists on your property to the Development Review Board in accordance with the provisions of Articles 2.7.11 and 12.2.2 of the CDO within fifteen (15) days **from the date of this notice**. **The deadline for filing an appeal is 4 pm on May 22, 2014.** Submit a complete application with ZV# and appropriate fee to the Department of Planning and Zoning, accompanied by a memo stating the ZV#, the owner's name and address, a brief description of the property with respect to which the appeal is taken, a reference to the regulatory provisions applicable to that appeal, the relief you are requesting, and the alleged grounds why such relief is believed proper under the circumstances. *Failure to appeal constitutes admission that the violation exists, and the decision of the enforcement officer shall be binding 24 V.S.A §4472(d).*

REGULATION CDO Article(s): 2, 3, 5, 12 and 24 VSA §4451
CITATION:

EILEEN M. BLACKWOOD, ESQ.
City Attorney
EUGENE M. BERGMAN, ESQ.
Sr. Assistant City Attorney
RICHARD W. HAESLER, JR., ESQ.
Assistant City Attorney
GREGG M. MEYER, ESQ.
Assistant City Attorney
KIMBERLEE J. STURTEVANT, ESQ.
Assistant City Attorney



149 Church St., Room 11
Burlington, VT 05401-8489
Phone: (802) 865-7121
Fax: (802) 865-7123
TTY: (802) 865-7142

CITY OF BURLINGTON, VERMONT
OFFICE OF
THE CITY ATTORNEY
AND
CORPORATION COUNSEL

RECEIVED
JAN 28 2014
DEPARTMENT OF
PLANNING & ZONING

January 28, 2014

Kevin M. Henry, Esq.
Primmer Piper Eggleston & Cramer, PC
150 South Champlain Street
PO Box 1489
Burlington, VT 05402-1489

RE: Complaint regarding 124 Spruce Street, Burlington

Dear Attorney Henry:

I am in receipt of your letter dated November 6, 2013 to Jeanne Francis, Zoning Specialist for Burlington Code Enforcement regarding the above-referenced matter. I have discussed the issue with my clients and reviewed the permit obtained by your clients T. Alan and Laurel G. Broughton for the installation of a cedar fence at 124 Spruce Street, ZP# 11-0936FC. Based upon the information now known to the City, it appears that your clients did not install the fence according to the approval granted in ZP# 11-0936FC. This unfortunately constitutes a zoning violation.

ZP# 11-0936FC and its correlating site plan approved May 20, 2011 identify the requested fence to be located on your clients' property, 124 Spruce Street. A recent survey prepared by a licensed Vermont surveyor submitted to the City identifies the subject fence as being located on the adjacent property, specifically 132 Spruce Street. Without sufficient evidence to the contrary, the current best evidence indicates that the fence is not installed on your clients' property in accordance with the approval they received.

I understand from your letter that your clients may dispute the property line. That is not before the City. Currently, the City has before it a survey that demonstrates non-compliance with the installation of a fence. Given the season, it is understandable that it would be difficult for your clients to move the fence within the statutory time frame to remedy a violation. The City is willing to allow your clients until May 1, 2014 to remove the fence from 132 Spruce Street and install it on their own property at 124 Spruce Street as per the approved site plan. Please confirm that your clients are

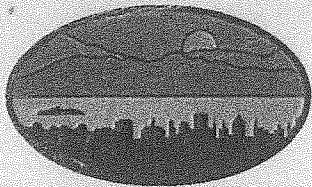
agreeable to this timeline. If your clients are unwilling to agree to this schedule, the City is willing to enter into a written agreement for an alternate timeline that is more agreeable with an explanation as to the necessity of a different schedule. Note that if this alternative solution is preferred it will require financial reimbursement to the City for administrative time used to implement an agreement. Also, as the fence is not on your clients' property, you will have to work with the owners of 124 Spruce Street to arrange removal details. 132

Please let me know if your clients do not plan to move the fence, as the City will need to move forward with enforcement.

Very truly yours,



Kimberlee J. Sturtevant

**ZONING PERMIT****FENCE**

City of Burlington, Vermont
Department of Planning and Zoning

Application Date: 5/19/2011

Appeal Expiration Date: 6/4/2011

Project Location: 124 SPRUCE STREET

District: RL

Owner: T ALAN BROUGHTON

Address: 124 SPRUCE STREET

BURLINGTON, VT 05401

Ward: 6

Telephone:

Tax ID: 050-2-097-000

Project Type: Residential - Site Imp/Landscaping/Parking/Fence

Project Description: Install Cedar picket fence; 3 ft. high from 15 ft. setback; 4 ft. high beyond that to rear fence. Replace existing fence from NE corner of garage to rear and from NE corner to new fence on East property line.

Construction Cost:	\$2,140	Lot Size (Sq Ft):	12,640
Net New Square Feet:	0.00	Net New # of Housing Units:	0
Existing % Lot Coverage:	0.00	Existing # of Parking Spaces:	0
Proposed % Lot Coverage:	0.00	Proposed # of Parking Spaces:	0
Net New % Lot Coverage:	0.00	Required # of Parking Spaces:	0

Zoning Permit #: 11-0936FC

Decision Type: Administrative

Level of Review: 1

Decision: Approved

See Conditions of Approval

Decision Date: May 20, 2011

Project File #: NA


Zoning Administrator

An interested person may appeal a decision of the Zoning Administrator to the Development Review Board until 4 pm on June 4, 2011.

Fee Type	Amount	Paid in Full	Balance Due:	\$0.00
Application Fee:	\$45.00	Yes	Date Paid:	_____
Development Review Fee:	\$0.00	NA	Check #	_____
Impact Fee:	Not Applicable			

Building Permit Required: Yes

Permit Received by: Laurel BroughtonDate: June 6, 2011

RECEIVED

MAY 19 2011

DEPARTMENT OF
PLANNING & ZONING

124 SPRUCE ST

1 1/2 INCH = 10 FT

--- current fence

--- proposed fence

GATE

GATE

GATE

GARAGE

HOUSE

WALK

gate

← DRIVEWAY →

WALK

SIDEWALK

SCALES
2 FT TOPIC
26.5 FT
TO TOPIC
1/2" = 10 FT

-- NOTE --

ANY MODIFICATIONS OR DEVIATIONS FROM THESE PLANS
REQUIRE ZONING APPROVAL PRIOR TO CONSTRUCTION.
ALL ERRORS IN DIMENSIONS, PLANS OR DETAILING ARE
FULLY THE RESPONSIBILITY OF THE APPLICANT/OWNER.

FINAL APPROVAL

SIGNED

PLANNING & ZONING DEPARTMENT
BURLINGTON, VERMONT

DATE 5/20/11

124 SPRUCE

Nic Anderson

From: dynamozoe@yahoo.com
Sent: Thursday, June 05, 2014 11:27 PM
To: Ken Lerner
Cc: Jeanne Francis; Kimberlee Sturtevant; William Ward; Nic Anderson
Subject: Re: appeal hearing at DRB July 1 meeting

Hi Ken,

Thank you for your email.

I'd actually prefer to make it earlier instead of later since this has been a known issue for many months and the delays seem unnecessary. Mrs. Broughton at 124 Spruce knows we leave town after the children finish school each summer work work out of the country. The delays are tactical. We intended to plant trees in the Spring after the fence was supposed to be moved in order to prevent damage to them by the workers. It would not be the first time that people within Mrs. Broughton's employ have come into our yard and driven over and damaged the lawn and chopped down our perennials including peonies in the care of her fence.

The invasion to our privacy and property from both sides has been unrelenting and we really want to resolve these matters and live our lives in peace and privacy.

It's important that we attend the hearing since historically those involved have had no qualms about lying under oath. Presumably the DRB trusted as we did, that everyone would tell the truth, the information in the last hearing was accepted as fact and DRB decisions have been determined in error. The delay to the hearing is merely a continuation of unethical tactics.

Please consider making the meeting sooner or keep the original date.

I'd like a copy of both letters - thanks for asking.

Respectfully,

Zoë Barracano
802-343-6889

On Jun 5, 2014, at 10:55 AM, Ken Lerner <KLerner@burlingtonvt.gov> wrote:

Hi Zoey:

In response to your voice mail - the schedule is that this is on the July 15th agenda - it will not be any later, it must be held by that date as there is a statutory time frame to hear an appeal. If you are unable to make that hearing written testimony can be provided. If you request a continuance, it would be at the DRB's discretion and we are not able to provide assurance that it would be granted. Let us know if you need a copy of the Notice of Violation or their attorney's letter.

Ken

** Please note that any response or reply to this electronic message may be subject to disclosure as a public record under the Vermont Public Records Act.

The domain "@ci.burlington.vt.us" will no longer work. Please update your contacts to use only "@burlingtonvt.gov" for any future correspondence. Thank you!

-----Original Message-----

From: Ken Lerner

Sent: Tuesday, June 03, 2014 12:15 PM

To: 'Laurel Broughton'

Cc: Kevin M. Henry; Kimberlee Sturtevant; Jeanne Francis; William Ward;
dynamozoe@yahoo.com; Nic Anderson

Subject: RE: appeal hearing at DRB July 1 meeting

Hi Laurel:

It has, at this time, been rescheduled - however just to let you know, that is the last possible hearing date due to statutory time frame when an appeal must be heard.

Ken

** Please note that any response or reply to this electronic message may be subject to disclosure as a public record under the Vermont Public Records Act.

The domain "@ci.burlington.vt.us" will no longer work. Please update your contacts to use only "@burlingtonvt.gov" for any future correspondence. Thank you!

-----Original Message-----

From: Laurel Broughton [<mailto:lbrought@uvm.edu>]

Sent: Monday, June 02, 2014 10:26 AM

To: Ken Lerner

Cc: Kevin M. Henry

Subject: appeal hearing at DRB July 1 meeting

Dear Ken,

I understand that the hearing on the appeal of the city's citation of a zoning violation against the fence between 124 and 132 Spruce St. (#266942) has been scheduled for the DRB's July 1 meeting. As I will be out of the country until July 10, could we please reschedule this for the July 15 meeting? Thank you.

Laurel Broughton